

General Information Letter: The Employee Retirement Income Security Act does not prohibit state income taxation of Voluntary Employee Benefit Associations. Letter Ruling IT 90-0073 rescinded.

October 4, 2001

Dear:

In 1990 you wrote to the Illinois Department of Revenue in order to request information regarding whether the Employee Retirement Income Security Act (ERISA) preempted Illinois from taxing the unrelated business income of Voluntary Employee Benefit Associations (VEBA's). Your letter to the Illinois Department of Revenue, dated March 15, 1990, stated the following:

My client, the xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, is a Voluntary Employee Benefit Association (VEBA), located in xxxxxxxx, Illinois. The federal identification number is xx-xxxxxxx and the trust files on a fiscal year ending the last Friday in October (52, 53 week fiscal year). The function of this VEBA is to provide for the payment of life, sickness and accident benefits of the employees of xxxxxxxxxxxxxxxxxxxxxxx.

Facts

Originally, this VEBA was exempt from taxation under 501(c)(9) of the Code. Effective with the 1984 Tax Reform Act, Non-Union VEBA's have to pay a tax on the investment income earned during their fiscal year. The 1984 Tax Reform Act amended the definition of unrelated business income, Sec. 512 of the Internal Revenue Code, to include this type of income for Non-Union VEBA's only.

In accordance with the new law, my client filed Form 990T and IL-990T reporting this income beginning with the year ending October 31, 1986.

In addition, the trust has filed and paid tax to Illinois for year ending October 30, 1987 and October 28, 1988. Also, I am preparing to file for the year ending October 27, 1989.

Question One

During July of 1989, the Wisconsin Department of Revenue issued a tax release (copy enclosed) that indicated for tax years 1988 and thereafter, VEBA's are no longer subject to Wisconsin franchise tax on their unrelated business income. The reason given was that the Employee Retirement Income Security Act (ERISA) preempts taxation by Wisconsin.

Question one then becomes; if Wisconsin is preempted from taxation by federal law, isn't Illinois also preempted from taxation? I discussed the law with Thomas Reed of the Wisconsin Department of Revenue (1-608-226-8474) and he informed me that specifically ERISA section 514 preempts the states from taxing this income. I have enclosed a copy of this law for your convenience.

Wisconsin also based its decision on the results of the following court cases:

General Split Corp. vs. Mitchel
323 F. Sup. 427 Eastern Dist. WI 1981

Shaw vs. Delta Airlines, Inc.
413 US 85 1983

Northwest Airlines vs. Roemer
693 F. Sup. 7 (D. Minn. 1984)

Question Two

In the event you determine the ERISA law to preempt Illinois from taxing the unrelated business income of VEBA's, when will the State make their decision effective?

Question Three

Will my clients be allowed to file a claim for refund for prior years?

Question Four

If your answer cannot be completed by March 15, 1990, can you call me with an indication on how to file my client's IL-990T that is due on March 15, 1990.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Please be advised that this correspondence is a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The Illinois Department of Revenue responded to your March 1, 1990 correspondence with its GIL No. IT 90-0073, dated March 15, 1990. Said GIL indicated the Department's determination that Illinois is preempted by §514 of ERISA from taxing "any employee benefit plan described in §1003(b)..." The GIL further indicated that it was the Department's position that the unrelated business income of a VEBA is therefore not subject to Illinois income taxation.

Please be advised that GIL No. IT 90-0073, dated March 15, 1990 has been rescinded.

It is now the Illinois Department of Revenue's determination that Section 205 of the IITA is not preempted by Section 514 of ERISA, and the unrelated taxable business income of a VEBA, as determined under Section 512 of the Internal Revenue Code, shall be such VEBA's base income in Illinois, without deduction for the tax imposed by the IITA. The Department's position as described in IT 90-0073, IT 93-0017 and IT-0187 has been rescinded, and the regulations pertaining to income not exempt from Illinois income taxation will be amended to reflect the Department's determination. (See 86 Ill. Adm. Code 100.2470(h)).

Taxpayers that relied upon the Department's letter rulings, IT 90-0073, IT 93-0017 and IT 93-0187, prior to the effective date of the amendment to 86 Ill. Adm. Code 100.2470(h), shall not incur liability

for taxes or penalties pursuant to Section 4(c) of the Taxpayers' Bill of Rights Act, 20 ILCS 2520/1 *et seq.*

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, or require additional information regarding this issue, please do not hesitate to contact our office.

Sincerely,

Matthew S. Crain
Staff Attorney -- Income Tax